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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 12 2007

Uniform Issue List: 408.03-00

TIER: RA: T3

Legend:

Taxpayer A =
Taxpayer B =
IRA X =
IRA Y =
Account C =
Amount A =
Amount B =
Financial Institution V =
State Z =

Dear :

This is in response to your request dated June 5, 2006, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code") applicable to individual retirement arrangements ("IRAs").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested

Taxpayer A, age 71, received a distribution on May 18, 2005, from IRA X totaling Amount A and another distribution from IRA Y totaling Amount B. IRAs X and Y were maintained with Financial Institution V. On the same day Taxpayer A contributed Amounts A and B to Account C, a non-IRA account.

Taxpayer B, and Taxpayer A had been living separate and apart from each other since Taxpayer A's retirement in 2003. Taxpayer B acting under a Durable General Power of Attorney granted her on April 9, 2006, asserts that Taxpayer A's failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer A's medical and mental illnesses, which impaired his ability to make financial decisions and to understand the consequences of his actions. Taxpayer B further represents that Amounts A and B have not been used for any purpose and remain in Account C.

Taxpayer B asserts that on May 18, 2005, Taxpayer A contacted Financial Institution V to request an address change. Upon reviewing a 2005 year-end statement from Financial Institution V, Taxpayer B discovered that Taxpayer A had also withdrawn Amounts A and B from IRAs X and Y respectively and deposited these amounts into a non-IRA account, Account C. It has been represented that Taxpayer A has no recollection of asking for distributions from IRAs X and Y although phone records of Financial Institution V appear to confirm that Taxpayer A did request the distribution.

According to medical documentation submitted by Taxpayer B, Taxpayer A is suffering from a neurological impairment that has adversely impacted his judgment and cognitive abilities, such as, verbal communication and memory. Because of Taxpayer A's medical condition, Taxpayer A granted to his wife and daughter a Durable General Power of Attorney in February 2006 which has been represented to be valid under State Z law. Taxpayer A's authorized representative asserts that at the time of the withdrawal, Taxpayer A was receiving treatment for his condition and documentation submitted with this ruling request attest to Taxpayer A's condition.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amounts A and B contained in section 408(d)(3) of the Code ("the Code").

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d); any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted on behalf of Taxpayer A is consistent with the assertion that Taxpayer A's failure to accomplish rollovers within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer A's medical and mental illnesses, which impaired his ability to make financial decisions and to understand the consequences of his actions.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution to Taxpayer A of Amounts A and B from IRAs X and Y, respectively. Pursuant to this ruling letter, Taxpayer A, or Taxpayer B acting on his behalf, is granted a period not to exceed 60 days as measured from the date of the issuance of this letter ruling to make rollover contributions of amounts not to exceed Amount A and Amount B (except as noted below) to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contributions, the contributions will be considered rollover contributions within the meaning of Code section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact
Please address all correspondence to
SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name and title.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose